IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1478 of 2001
in
SPECIAL CIVIL APPLICATIONNo 3796 of 2001
with
CIVIL APPLICATION NO. 12220/2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI MANDAMBHAI KAMALIYA
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 1478 of 2001
MR. K.G. VAKHARIA, SR. COUNSEL WITH MS. AVNI S MEHTA for Appellant No. 1
MRS. HARSHA DEVANI, AGP, for Respondent State

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 27/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

The appellant challenged the judgement and order dated 16.10.2001 of the learned Single Judge in Special Civil Application No. 3796 of 2001 rejecting the petition filed against the orders made under Section 57(3) and 57(1) of the Gujarat Panchayats Act, 1993 removing the petitioner from the office of Sarpanch.

2. The learned Single Judge after considering the detailed contentions raised on behalf of the parties and on the basis of the record, found that the authorities had recorded concurrent findings against the petitioner and there was no good reason for interfering with those findings.

3. The learned senior counsel appearing for the appellant contended that there was no misconduct committed by the appellant acting as a Sarpanch and that the agreement was executed by him on the basis of the earlier Resolution of the panchayat which was passed by circulation. It was submitted, relying on the decision of this court in the case of U.S. ZALA VS. S.D. VADERA reported in 37(2) G.L.R. 349, that since the decision to give contract was taken by the members of the panchayat by a circular Resolution, it cannot be said to be an act of the Sarpanch.

4. Under Section 57 of the said Act the competent authority is empowered to remove from office any member of the panchayat, the Sarpanch or the Upa-Sarpanch after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry, as it deemed necessary, if such Sarpanch or Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties or functions under the Act or has become incapable of performing such duties and functions. A discretion is given to the competent authority to remove such Sarpanch even from the membership of the panchayat. Sub-section (3) of Section 57 of the said Act enables the person aggrieved by an order of the competent authority to file an appeal to the State Government. It is not in dispute that an adequate opportunity of being heard was given to the appellant before making of the order under Section 57(1) of the Act and the appellate order under Section 57(3) of the Act.

5. In the show cause notice dated 25.4.2000 one of the allegations levelled against the appellant was that

contrary to the directions issued by the State Government he had executed the agreement in favour of the contractor for collection of octroi for a period of three years. The fact that the appellant had executed that agreement is not in dispute. The contention is that he was required to do so because of the Resolution made by the panchayat and that it was a collective action of the panchayat for which he cannot be held to be liable.

5.1 Undisputedly by the Government's circular letter dated 23.3.1999 instructions were given to the panchayats not to give any contract for collection of octroi either by public auction or by private agreement. Therefore, there was no occasion for the panchayat to have passed such Resolution by circulation in contravention of the directions issued by the Government. To that extent the members of the panchayat who passed the circular Resolution committed breach of the directions of the Government. However, the matter did not rest there. The Sarpanch who holds an important office under the provisions of the said Act himself executed the agreement in favour of the contractor enabling him to collect octroi for a period of three years and this action of the Sarpanch also violated the Government directions. It, therefore, cannot be said that the Sarpanch did not commit any misconduct. The decision in U.S. ZALA Vs. S.D. VADERA (supra) has no application to the facts of the case because in that matter the panchayat had passed a Resolution imposing levy of toll on animals carrying burden, under Section 178(1)(v-a) of the Gujarat Panchayats Act, 1961, which empowered the panchayat to impose such toll. There were no contrary direction in any other statutory provisions and in background of the facts of that case, it was held that for the collective action taken by the panchayat of imposing toll under the statutory provision empowering it to do so, the act was done by the panchayat which cannot be said to be an act by Sarpanch.

6. The learned senior counsel contended that subsequently on 29.3.2000 the panchayat passed a fresh Resolution as a result of which the contract was not implemented. However, that will not absolve the appellant from the liability arising out of the misconduct of entering into an agreeent in direct contravention of the instructions issued by the State Government. If the panchayat at a later stage had cured that defect, the benefit thereof cannot go to the Sarpanch.

7. In view of the concurrent findings of the fact

reached by the authorities under Section 57(1) and Section 57(3) of the Act, the learned Single Judge has rightly chosen not to interfere with the impugned decisions of the authorities. The appeal is therefore summarily dismissed.

In the above view of the matter, the Civil Application stands rejected.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)
(pkn)